

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs January 30, 2007

**DEXTER FRANK JOHNSON v. TONY PARKER, WARDEN AND THE
STATE OF TENNESSEE**

**Appeal from the Criminal Court for Hamilton County
No. 256826 Douglas A. Meyer, Judge**

No. E2006-00313-CCA-R3-HC - Filed April 30, 2007

The petitioner, Dexter Frank Johnson, pled guilty to two counts of first degree murder, one count of attempt to commit first degree murder and one count of attempted aggravated burglary. As a result, the petitioner was sentenced to life in prison for the two first degree murder convictions, twenty-five years for attempt to commit first degree murder and six years for attempted aggravated burglary. The trial court ordered the sentences to run concurrently. The petitioner sought post-conviction relief. The petition was dismissed and this Court affirmed the dismissal of the post-conviction petition. See Dexter Frank Johnson v. State, No. 03C01-90503-CR-00088, 1996 WL 49252 (Tenn. Crim. App., at Knoxville, Feb. 13, 1996), perm. app. dismissed, (Tenn. Nov. 9, 1998). Since that time, the petitioner has unsuccessfully sought habeas corpus relief on two occasions. See Dexter Frank Johnson v. State, No. E2004-01260-CCA-R3-HC, 2004 WL 1945744 (Tenn. Crim. App., at Knoxville, Sept. 2, 2004), perm. app. denied (Tenn. Dec. 20, 2004); Dexter Johnson v. State, No. 03C01-9707-CR-00241, 1999 WL 41837 (Tenn. Crim. App., at Knoxville, Feb. 2, 1999), perm. app. denied, (Tenn. Jun. 14, 1999). The petitioner subsequently filed a third petition for habeas corpus relief in Hamilton County Circuit Court, which was denied by the trial court. On appeal, he challenges the trial court's decision denying habeas corpus relief. Because we determine that the petitioner filed his petition in the improper venue, failed to comply with the mandatory procedural requirements as set forth in Tennessee Code Annotated section 29-21-107, and does not state a claim for habeas corpus relief, we affirm the dismissal of the petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and J. CURWOOD WITT, JR., J., joined.

Dexter Frank Johnson, Pro Se, Tiptonville, Tennessee

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; J. Michael Taylor, District Attorney General, for the appellee, State of Tennessee.

OPINION

On February 11, 1994, the petitioner entered guilty pleas to two counts of first degree murder, criminal attempt to commit first degree murder, and criminal attempt to commit aggravated robbery. The petitioner received two life sentences for the murder convictions, twenty-five years for the attempted murder conviction and six years for the attempted aggravated robbery conviction. These sentences were ordered to be served concurrently. See Dexter Johnson v. State, No. 03C01-9707-CR-00241, 1999 WL 41837 (Tenn. Crim. App., at Knoxville, Feb. 2, 1999), perm. app. denied, (Tenn. Jun. 14, 1999). The petitioner filed a petition for post-conviction relief, asserting that his guilty pleas were not voluntarily made. The trial court denied relief, and this Court affirmed the judgment on appeal. See Dexter Johnson v. State, No. 03C01-9503-CR-00088, 1996 WL 49252 (Tenn. Crim. App., at Knoxville, Feb. 13, 1996), perm. app. dismissed, (Tenn. Nov. 9, 1998). On December 22, 2003, the petitioner filed a second pro se petition seeking a writ of habeas corpus in the Criminal Court for Hamilton County in which he asserted only a claim of ineffective assistance of counsel, alleging that his trial counsel conspired with the prosecutor by having another defendant wear a wiretap in an effort to obtain evidence regarding charges to which the petitioner ultimately pled guilty. The trial court noted that the petition did not include a copy of the judgment being challenged, failed to state whether it was the first application for the writ, and did not state the petitioner's place of incarceration. The trial court determined that the petition failed to state a valid habeas corpus claim and summarily denied relief. On appeal, this Court affirmed the trial court's denial of habeas corpus relief. See Dexter Frank Johnson v. State, No. E2004-01260-CCA-R3-HC, 2004 WL 1945744 (Tenn. Crim. App., at Knoxville, Sept. 2, 2004), perm. app. denied, (Tenn. Dec. 20, 2004).

On January 6, 2006, the petitioner filed his third petition for habeas corpus relief in Hamilton County Criminal Court. This petition alleged that the petitioner entered an involuntary and unintelligent guilty plea because he did not know that he was exempt from capital punishment and that his sentences violated Blakely v. Washington, 542 U.S. 296 (2004). The trial court dismissed the petition for habeas corpus relief, determining that the petition was not filed in the proper venue as mandated by Tennessee Code Annotated section 29-20-105. The trial court noted that the petitioner was incarcerated in Lake County and that the petition was filed in Hamilton County. In addition to dismissing the petition for improper venue, the trial court also determined that the petition did not state a proper claim for habeas corpus relief because the "involuntary or unintelligent nature of a guilty plea is not a ground for reopening a post-conviction petition," and "irrespective of whether Blakely establishes a new or retrospectively applicable constitutional rule," the trial court questioned whether it was "applicable in the petitioner's cases, the sentences having been agreed, i.e., not having been enhanced."

The petitioner filed a timely notice of appeal following the dismissal of the petition.

Analysis

On appeal, the petitioner argues that his “guilty pleas was [sic] not voluntarily and intelligently made insofar as the trial court did [not] advise him of his constitutional right’s [sic]” and that his guilty plea “resulted from the induced threats of death penalty.” The petitioner abandons his Blakely claim on appeal. The State contends that the trial court properly dismissed the petition for improper venue. In the alternative, the State argues that the petition failed to comply with the mandatory requirements of Tennessee Code Annotated section 29-21-107 and that the petition fails to state a colorable claim for relief.

The determination of whether to grant habeas corpus relief is a question of law. See McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001). As such, we will review the habeas corpus court’s findings de novo without a presumption of correctness. Id. Moreover, it is the petitioner’s burden to demonstrate, by a preponderance of the evidence, “that the sentence is void or that the confinement is illegal.” Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Article I, section 15 of the Tennessee Constitution guarantees an accused the right to seek habeas corpus relief. See Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). A writ of habeas corpus is available only when it appears on the face of the judgment or the record that the convicting court was without jurisdiction to convict or sentence the defendant or that the defendant is still imprisoned despite the expiration of his sentence. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993); Potts v. State, 833 S.W.2d 60, 62 (Tenn. 1992). In other words, habeas corpus relief may be sought only when the judgment is void, not merely voidable. See Taylor, 995 S.W.2d at 83. “A void judgment ‘is one in which the judgment is facially invalid because the court lacked jurisdiction or authority to render the judgment or because the defendant’s sentence has expired.’ We have recognized that a sentence imposed in direct contravention of a statute, for example, is void and illegal.” Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000) (quoting Taylor, 955 S.W.2d at 83).

However, if after a review of the habeas petitioner’s filings the habeas corpus court determines that the petitioner would not be entitled to relief, then the petition may be summarily dismissed. Tenn. Code Ann. § 29-21-109; State ex rel. Byrd v. Bomar, 381 S.W.2d 280 (Tenn. 1964). Further, a habeas corpus court may summarily dismiss a petition for writ of habeas corpus without the appointment of a lawyer and without an evidentiary hearing if there is nothing on the face of the judgment to indicate that the convictions addressed therein are void. Passarella v. State, 891 S.W.2d 619 (Tenn. Crim. App. 1994), superceded by statute as stated in State v. Steven S. Newman, No. 02C01-9707-CC-00266, 1998 WL 104492, at *1 n.2 (Tenn. Crim. App., at Jackson, Mar. 11, 1998).

The procedural requirements for habeas corpus relief are mandatory and must be scrupulously followed. Hickman v. State, 153 S.W.3d 16, 19-20 (Tenn. 2004); Archer, 851 S.W.2d at 165. For the benefit of individuals such as the petitioner, our legislature has explicitly laid out the formal

requirements for a petition for a writ of habeas corpus at Tennessee Code Annotated section 29-21-107:

(a) Application for the writ shall be made by petition, signed either by the party for whose benefit it is intended, or some person on the petitioner's behalf, and verified by affidavit.

(b) The petition shall state:

(1) That the person in whose behalf the writ is sought, is illegally restrained of liberty, and the person by whom and place where restrained, mentioning the name of such person, if known, and, if unknown, describing the person with as much particularity as practicable;

(2) The cause or pretense of such restraint according to the best information of the applicant, and if it be by virtue of any legal process, a copy thereof shall be annexed, or a satisfactory reason given for its absence;

(3) That the legality of the restraint has not already been adjudged upon a prior proceeding of the same character, to the best of the applicant's knowledge and belief; and

(4) That it is the first application for the writ, or, if a previous application has been made, a copy of the petition and proceedings thereon shall be produced, or satisfactory reasons be given for the failure so to do.

"A habeas corpus court may properly choose to dismiss a petition for failing to comply with the statutory procedural requirements." Hickman, 153 S.W.3d at 21. The petitioner has not followed the statutory requirements for a habeas corpus petition. The petition does not state whether this is his first application for the writ of habeas corpus. This in itself is sufficient reason for the habeas corpus court to dismiss the petition.

Moreover, the State argues that the trial court properly dismissed the petition because it was filed in the wrong court. The petitioner is incarcerated at the Northwest Correctional Complex in Tiptonville, Tennessee in Lake County. He filed his writ in the Hamilton County Criminal Court. Under Tennessee Code Annotated section 29-21-105, "[t]he application should be made to the court or judge most convenient in point of distance to the applicant, unless a sufficient reason be given in the petition for not applying to such court or judge." The petitioner has failed to give a sufficient reason that the petition was not filed in Lake County. Thus, the petitioner has failed to comply with Tennessee Code Annotated section 29-21-105, and this alone is an adequate basis for the trial court to dismiss his petition. See Torris Benson v. Glen Turner, Warden, No. E2005-00409-CCA-R3-HC, 2005 WL 2978963 (Tenn. Crim. App., at Knoxville, Nov. 7, 2005), perm. app. denied, (Tenn. Feb. 21, 2006).

Finally, even if the petitioner had filed his petition in the correct court and had properly followed the procedural requirements set forth in Tennessee Code Annotated section 29-21-107, he still has not presented an issue that is appropriate for habeas corpus review. The petitioner's claim of an involuntary and unintelligent guilty plea is not a colorable claim for habeas corpus relief. This claim would render his judgement voidable, not void. See Archer, 851 S.W.2d at 164; Passarella, 891 S.W.2d at 627. Consequently, the trial court properly dismissed the petition for habeas corpus relief.

Conclusion

For the foregoing reasons, the judgment of the trial court is affirmed.

JERRY L. SMITH, JUDGE